

In the Matter of Merchant Mariner's Document No. Z-903204
Issued to: ROBERT E. SIMONS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ROBERT E. SIMONS

This appeal has been taken from an order dated 28 February, 1952, by an Examiner of the United States Coast Guard at San Francisco, California, suspending Appellant's Merchant Mariner's Document No. Z-903204 for a period of six (6) months (which should not be made effective provided no charges are proved against him for the period of one (1) year from that date) upon finding him guilty of misconduct based upon a specification alleging, in substance, that while serving under authority of said document as water tender on the American SS CUBA VICTORY, on 10 February, 1952, he committed an assault and battery upon the person of the Second Assistant Engineer.

APPEARANCE: Samuel Bennett, Vice President, Marine Firemen, Oilers and Watertenders' Union, 150 Broadway, San Francisco, California.

FINDINGS OF FACT

On January, 1952, Appellant was serving as fireman-watertender on the American SS CUBA VICTORY under authority of his Merchant Mariner's Document No. Z-903204.

While so employed, Appellant pulled a hot burner which sprayed hot oil over his person and onto the engine room floor plates. Believing the Second Assistant, also on watch, was amused at his discomforture, Appellant expressed resentment and a verbal exchange between the two men followed, culminating in a struggle which was ended when the oiler separated them. Appellant was ordered from the fireroom by the engineer, and when obeying that order, the two men again clinched, and were again separated by the oiler.

There is no evidence that anyone was injured in either altercation.

OPINION

In support of his appeal four (4) propositions are urged by Appellant, but I find it necessary to consider only one to dispose of the case, viz., the testimony is insufficient to support the Examiner's findings and opinion.

After careful examination of the Record, I am of opinion the testimony does not support the charge and specification. I am unable to establish to my satisfaction that Appellant was the aggressor at any stage of the developing situation; and it is not necessary for me to discuss the conduct of the Second Assistant beyond observing that he did nothing to ameliorate matters and avoid the difficulty which later eventuated.

ORDER

The Examiner's Order dated San Francisco, California, on 28 February, 1952, is VACATED, SET ASIDE and REVERSED. The charge against this Appellant in this case is DISMISSED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 29th day of May, 1952.